

REMARKS/ARGUMENTS

Claims 1-8, 13-19 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,855,108 to Ishibiki et al. ("Ishibiki"). As the present application was filed before Ishibiki issued, Ishibiki is prior art only under 35 U.S.C. §102(e). In accordance with 35 U.S.C. §103(c)(1), subject matter which qualifies as prior art under only §102(e) cannot be used in an obviousness rejection if the prior art reference and the claimed subject matter are owned by the same person or subject to an obligation of assignment to the same person. As can be seen from the front cover of the Ishibiki reference, Ishibiki is assigned to Olympus Corporation. The present application similarly is assigned to Olympus Corporation as is evidenced by an Assignment filed July 18, 2005. A copy of the Notice of Recordation is attached for the Examiner's convenience. As such, the Ishibiki reference cannot be used as prior art in a rejection based on 25 U.S.C. §103. Therefore, reconsideration of the rejection of claims 1-8, 13-19 and 24 under 35 U.S.C. §103 is respectfully requested in light of the remarks above.

Applicant notes with appreciation that claims 9-12 and 20-23 are indicated as being allowable if rewritten in independent form. Applicant chooses to defer a re-writing of these claims until a final resolution of the above matters.

It is asserted that the present communication places the application in condition for allowance and entry is earnestly solicited.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 31, 2006:

Respectfully submitted,

Max Moskowitz
Name of applicant, assignee or
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Signature

March 31, 2006
Date of Signature

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